

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application
25616,

EAST YOLO COMMUNITY SERVICES
DISTRICT

Applicant

CONTRA COSTA COUNTY WATER
DISTRICT, ET AL.,

Protestants

Order: WR 80-14

Source: Sacramento River

County: Yolo

ORDER ACCEPTING PETITION FOR RECONSIDERATION AND AMENDING
DECISION 1559

On June 19, 1980, the State Water Resources Control Board adopted Water Rights Decision 1559, approving Application 25616 and ordering issuance of a permit. A petition for reconsideration of Decision 1559 postmarked July 17, 1980, was filed by Contra Costa County Water District (Contra Costa).

The eight points cited by Contra Costa as basis for requesting reconsideration all involve matters which were considered in arriving at Decision 1559. The petition and points allege that the decision is not supported by substantial evidence and includes errors in law. The points made by the petitioner and our responses are as follows:

1. *Approval of Application 25616 will further reduce "natural" Delta inflow. The extent and effect of such reductions on water quality in the Delta has not been determined. (paraphrased)*

The Board is aware of the magnitude and probable cumulative impacts of incremental diversions as a result of exhibits, testimony and references in the record for Decision D1559, D1485, D1045 and D990. In Decision 1485 and the accompanying water quality control plan the Board set

water quality standards for protection of the Delta, based upon the best current information. Also, the Board included standard permit terms 80 (condition 6) and 90 (condition 7) in Decision D1559 to reserve jurisdiction to change the season of diversion or reduce the season of diversion due to annual variations in demands and hydrologic conditions which affect water quality and availability. In addition, the Board anticipated these adjustments at the time of the hearing and formulated studies before the adoption of the new terms. Those studies are now authorized and are being implemented to resolve the reserved jurisdiction and flow variability issues before the reserved jurisdiction lapses.

2. *The permit will allow appropriation of water which Contra Costa and others are entitled. Delta users are left without effective or practical remedy because the Board has not determined the extent surplus water is available in the Sacramento Basin. (paraphrased)*

Prior rights of Delta water users are protected when the conditions of D1485 are met. Provision has been made for changes based on better information as described above. The dual constraints of conditions six (6) and seven (7) in D1559 provide the most effective and practical remedy to preclude possible infringement upon the rights of Contra Costa and other Delta water users.

3. *There is no evidence to support a findings that unappropriated water is available in the Sacramento River at the applicant's proposed point of diversion during the approved period of diversion.*

The record includes analysis and findings of availability of unappropriated water in formulation of Decisions D1559, D1045 and D990. Those and other previous decisions establish seasons of availability of unappropriated water for various in-basin users and the CVP. D990 found unappropriated water available year-round in the Delta for the CVP. D1045 found no water available in July and August in reach three (3).

of the Sacramento River. Condition six (6) of Decision 1559 reserves jurisdiction to change that season in the event current studies indicate this to be necessary or indicate a variable season should be imposed. The fact that applicant currently has a valid contract for purchase of CVP water from WPRS during any period of the year unappropriated water is not available relieves concern about the effects of changes which may occur as a result of Board reconsideration of the season of availability.

4. *The order of the Board will allow the applicant to appropriate 12 percent of its water requirements during July which is beyond the scope of the application.*

Decision 1559 does not authorize any diversion during the months of July and August under permit to be issued pursuant to Application 25616.

5. *The order does not require inclusion in the permit of standard permit term 91.*

Term 91 was developed primarily to protect the CVP and SWP from new appropriations that might deplete releases from project storage during certain year types. In this case the CVP has a contractual obligation to provide contract water to the applicant when supplemental project water is being released. However, the Board concurs that permittee should be advised in the same manner as other similar permittees when water is not available for diversion under the priority of its permit. Whether or not actual diversions would be reduced at such times would depend upon the availability of contract water.

6. The decision fails to consider the alternative source of water available to the applicant.

Decision D1559 considered this point at pages 2, 9 and 10.

7. The finding that the applicant has executed a contract with the Water Power Resources Service is contrary to the evidence.

Closing briefs included in the record indicate that appropriate approvals of the contract had been secured.

8. By failing to recognize the priority of the petitioner's water rights, the Board has ignored the clear mandate of Water Code Section 11460.

Petitioners rights under licensed Application 5941, Contra Costa County Water District, were considered in Decision D1550, D1485, D1045, D990 and other related decisions. Protestant's contractual rights are limited by their contract for CVP water and term 22 of D990. The 1978 Delta Water Quality Control Plan, considered Water Code Section 11460 in establishment of water quality standards at various locations in the Delta. The standards adopted in the plan and imposed upon the Projects in D1485 recognize the priority of licensed Application 5941 and protect the reasonable beneficial use of water by protestant under that application.

Finding

Various points in the petition involve factual, legal or mixed factual and legal issues. The petition was not accompanied by a statement of legal points and authorities as required by Title 23, Section 737.2(c).

The Board, having considered carefully each of the points alleging cause for reconsideration of Decision D1559, finds that (1) Decision D1559 is supported by substantial evidence; (2) Decision D1559 is not contrary to law, and (3) no new issues have been raised in said petition that warrant further reconsideration.

IT IS HEREBY ORDERED that the petition for reconsideration of Decision D1559 be accepted and that Decision D1559 be amended to require that standard permit term 91, which reads as follows, be included in any permit issued under Application 25616:

"No diversion is authorized by this permit (license) when satisfaction of inbasin entitlements requires release of supplemental Project water. The Board shall advise permittee (licensee) of the probability of imminent curtailment of diversions as far in advance as practicable based on anticipated requirements for supplemental Project water provided by the Central Valley Project or the State Water Project operators. The Board shall notify the permittee (licensee) of curtailment of diversions when it finds that no water is available for diversion under this permit (license).

For the purpose of initially determining supplemental Project water required for inbasin entitlements, the following definitions shall apply:

- a. Inbasin entitlements are defined as all rights to divert water from streams tributary to the Sacramento-San Joaquin Delta or the Delta for use within the respective basins of origin or the Legal Delta, unavoidable natural requirements for riparian habitat and conveyance losses, and flows required by the Board for maintenance of water quality and fish and wildlife. Export diversions and Project carriage water are specifically excluded from the definition of inbasin entitlements.
- b. Supplemental Project water is defined as water imported to the basin by the Projects, and water released from Project storage, which is in excess of water required for Project export and Project inbasin deliveries.

Notice of curtailment of diversion under this term shall not be issued by the Board until:

1. Project operators jointly develop and demonstrate to the Board a reasonable accurate method of calculating supplemental Project water.
2. The Board has approved the method of calculating supplemental Project water and has confirmed the definitions of inbasin entitlements and supplemental Project water after public hearing.
3. The Project operators have notified the Board that the release of supplemental Project water is imminent or has occurred. Such notice should include the times and amounts of releases or potential releases.
4. The Board finds that supplemental Project water has been released or will be released."

IT IS FURTHER ORDERED that in all other respects the petition
is denied.

Dated: August 7, 1980

/S/ CARLA M. BARD
Carla M. Bard, Chairwoman

ABSENT
William J. Miller, Vice-Chairman

/S/ L. L. MITCHELL
L. L. Mitchell, Member

/S/ JILL B. DUNLAP
Jill B. Dunlap, Member

ABSENT
F. K. Aljibury, Member